

REMARKS

Thorough examination of the application is sincerely appreciated.

In the Office Action, claims 3, 5, 10, 12, 17 and 19 were deemed to be allowable if placed in independent form.

Further according to the Office Action, claims 15, 16 and 17 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent 3,324,237 (Cherry). Still further according to the Office Action, claims 1, 2, 4, 6-9, 11, 13, 14 and 20 were rejected under 35 USC 103(a) as being obvious over Cherry. In response, the rejections are respectfully traversed as lacking sufficient factual support.

In particular, on page 4 of the Office Action, the examiner alleges, among other things, that Applicant's claimed feature of determining a highest spatial frequency within the image content is disclosed in Fig. 1, col. 4, line 20 to col. 5, line 65, and col. 8, line 13 to [page?] 12, line 50.

It is respectfully submitted that the examiner is factually wrong. Nowhere in those portions or anywhere else in the patent does Cherry show or teach, among other things, Applicant's claimed feature of determining a highest spatial frequency within the image content, as recited in claim 15. Cherry merely refers to periods of low detail and high detail in a picture. For example, Cherry describes that during periods when picture areas of low-detail are being scanned, the resultant low-detail signals have a small short-term bandwidth. See col. 4, lines 11-13. Similarly, Cherry discloses that for picture areas of high-detail, the corresponding high-detail signal from the scanner may be of several megacycles bandwidth. See col. 4, lines 13-16. Contrary to the assertions in the Office Action, Cherry's low-detail and high-detail periods with the corresponding low bandwidth and high bandwidth signals are NOT equivalent to Applicant's determining the highest spatial frequency within the image content. Clearly, Cherry's high-

bandwidth signal is not analogous to Applicant's highest spatial frequency. Hence, any analogy between Cherry's disclosure and Applicant's claimed subject matter is factually wrong and cannot be sustained on the record.

It is believed that the examiner broadly and impermissibly refers to large portions of the patent as allegedly describing Applicant's features. Applicant's representative reviewed the entire cited portions of the patent and fails to find such a disclosure, contrary to the examiner's remarks. Should the examiner maintain his rejection, he is respectfully requested to 1) **particularly point out** those portions in Cherry allegedly disclosing the claimed subject matter, as the indicated portions in the patent are too broad; and 2) provide an affidavit indicating the alleged correspondence between Cherry's high-bandwidth signal and Applicant's highest spatial frequency.

Further to the Office Action, the examiner alleges, among other things, that Applicant's claimed feature of selecting the variable sampling rate over a continuous range as a function of the highest spatial frequency within the image content is disclosed in the same portions of the Cherry patent as above, namely Fig. 1, col. 4, line 20 to col. 5, line 65, and col. 8, line 13 to [page?] 12, line 50.

Once again, the examiner is factually wrong. If Cherry is deficient in disclosing the Applicant's feature of determining the highest spatial frequency, then it is clear that Applicant's feature of selecting the variable sampling rate over a continuous range **as a function of** the highest spatial frequency cannot be found in the prior art reference. There is simply no mention of such feature in Cherry.

Pursuant to MPEP, Section 2131, to anticipate a claim, the reference must teach every element of the claim. As discussed above, Cherry is woefully deficient in teaching each and every element of Applicants' claim 15. It is, therefore, respectfully submitted that independent

claim 15 is not anticipated by Cherry. Withdrawal of the rejection is respectfully requested, as it cannot be sustained legally.

Claims 16 and 17 depend from independent claim 15, which has been shown to be allowable over the prior art reference. Accordingly, claims 16 and 17 are also allowable by virtue of their dependency, as well as the additional subject matter recited therein. Applicant submits that the reason for the rejection of claims 16 and 17 has been overcome and respectfully requests withdrawal of the rejection and allowance of the claims.

Independent claims 1 and 8 contain, among other things, those features of claim 15 as discussed above. Applicant essentially repeats the same argument as above with reference to claim 15 and asserts that claims 1 and 8 are also allowable for the same reasons as claim 15.

In addition, Applicant agrees with the examiner that Cherry fails to teach or suggest the claimed feature of a sampling mechanism coupled to the input and sampling the analog video signal utilizing a variable sampling rate modulated for segments of the analog video signal based upon spatial frequencies within the image content contained within the analog video signal, as recited in claim 1. However, Applicant disagrees with the examiner and contends that Cherry provides no suggestion or motivation for the above feature in col. 4, lines 40-50 of the patent.

The Examiner did not identify any source of information from which to base its argument on one having an ordinary skill in the art. Therefore, it appears that the Examiner uses her own knowledge as a skilled artisan. Such generalized statement, however, fails to satisfy the level of specificity that is required. "Particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed." In re Kotzab, 1371. The MPEP provides guidelines for relying on official notice and personal knowledge, which the Examiner did not follow in this case:

The rationale supporting an obviousness rejection may be based on common knowledge in the art of “well-known” prior art. The examiner may take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being “well-known” in the art ...

When a rejection is based on facts within the personal knowledge of the examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the examiner. Such an affidavit is subject to contradiction or explanation by the affidavits of the applicant and other persons.

See MPEP §2144.03. The Examiner’s conclusory statement and convenient assumption about skilled artisan are inadequate to support a finding of motivation under either the binding case law or MPEP. If the examiner disagrees, it is respectfully submitted that an affidavit be produced stating that either the examiner or a skilled artisan would find it obvious to arrive at the Applicant’s claimed feature based on the Cherry’s disclosure in col. 4, lines 40-50. In the absence of such affidavit from the examiner or skilled artisan, the analogy is factually in error.

Claims 2, 4, 6, 7, 9, 11, 13, 14 and 20 depend from independent claim 1 and 8, which have been shown to be allowable over the prior art reference. Accordingly, claim 2, 4, 6, 7, 9, 11, 13, 14 and 20 are also allowable by virtue of their dependency, as well as the additional subject matter recited therein. Applicant submits that the reason for the rejection of claims 2, 4, 6, 7, 9, 11, 13, 14 and 20 have been overcome and respectfully requests withdrawal of the rejection and allowance of the claims.

In view of the above, it is respectfully submitted that Cherry does not anticipate or render obvious the present invention because the prior art reference fails to teach or suggest all of the features of the present invention, as discussed hereinabove.

An earnest effort has been made to be fully responsive to the Examiner’s correspondence and advance the prosecution of this case. If there are any questions, the Examiner is respectfully

requested to call the undersigned attorney at the number listed below.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Please direct all future correspondence related to this application to:

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Respectfully submitted,

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